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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 94M-62
40846

In the Matter of)
Keyboard Broadcasting Communication)
Licensee of Station WCSA (AM))
Ripley, Mississippi)
Order to Show Cause Why the)
License for Station WCSA (AM))
Ripley, Mississippi)
Should Not be Revoked)

MM Docket No. 93-317

MEMORANDUM OPINION AND ORDER

Issue: February 4, 1994 Released: February 7, 1994

1. On December 29, 1993, the Chief, Audio Service Division released an Order to Show Cause and Hearing Designation Order. See DA 93-1523. There he ordered Keyboard Broadcasting Communication (Keyboard), the licensee of WCSA(AM), Ripley, Mississippi, to show cause why WCSA(AM)'s license should not be revoked.¹

2. In so doing, the Chief stated that WCSA(AM) has been off the air since September 1, 1991, and has been off the air without authority since July 16, 1993.² He further pointed out that on April 16, 1993, Keyboard was advised that any further requests for authority to remain silent had to ". . . be accompanied by a detailed summary of the steps being taken to return WCSA(AM) to on-air operations." Keyboard has never submitted such a detailed summary. In fact Keyboard never responded at all to the Commission's April 16, 1993 admonition.

3. So the Chief charged Keyboard with violating 47 CFR 73.1740 and/or 73.1750. And he scheduled a hearing to determine whether Keyboard is able and intends to expeditiously resume WCSA(AM)'s broadcast operations.

¹ WCSA(AM) is a daytime-only AM 500-watt station assigned to 1260 kHz, Ripley, Mississippi (population 5371). Ripley is in the economically disadvantaged northeastern section of the state.

² Actually, since 1983 WCSA(AM) has probably been off the air more than it has been on the air. E.g. See FCC 86D-19 released March 21, 1986 at para.9, and FCC 86R-34 released May 27, 1986 at paras. 2 and 5. Stated another way WCSA has done precious little to serve the public for over a decade.

FCC MAIL SECTION

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4. The Chief indicated that if Keyboard wanted to be heard they should file a written notice of appearance within 30 days after receiving the Show Cause Order. In that written appearance Keyboard was to signify that they would appear at the hearing and present evidence on the matters specified in the Order. DISPATCHED BY

5. The 30 days passed. The Trial Judge received no written notice of appearance. But before he issued the order certifying the matter to the Commission, he decided to double-check with the Mass Media Bureau counsel. Bureau counsel indicated that he hadn't received any written notice of appearance either. He said, however, that as still another extra precaution he would run a file check.

6. He did so, and discovered a letter dated January 28, 1994, that an attorney in Memphis, Tennessee (Lenal Anderson, Jr.) sent to Stuart B. Bedell, Assistant Chief Audio Services Division. Attached to that document is a 4-page "Notice of Written Appearance and Reply to Order to Show Cause." The Notice of Written Appearance is signed by both Anderson, and "Lillie Jubert, Owner, Keyboard Broadcasting Commission (sic)." Keyboard represents that it will appear at both the March 29, 1994 prehearing conference and the May 2, 1994 hearing. But they did not represent that they would present evidence on matters specified in the Show Cause Order. See paragraph 4 supra.

7. In addition to their notice of appearance such (as it is), Keyboard offers seven reasons why they have been unable to resume broadcast operation, and conclude by asking that "...the Commission rescind its Order to Show Cause...and give the licensee a reasonable time, not to exceed one year, within which this broadcast property will be brought in to regulatory compliance."

8. There is no certificate of service attached to either Anderson's letter or the Notice of Written Appearance. Nor is there any indication that the senders have complied with 47 CFR 1.51(a) by filing the appropriate number of copies.

Ruling

9. Keyboard's January 28, 1994 letter cannot be considered a valid 47 CFR 1.91(c) written notice of appearance. It is both procedurally and substantively defective.

10. Procedurally, Keyboard has failed to comply with the 47 CFR 1.47 Proof of Service provisions; they have failed to file the appropriate number of copies of their pleading under 47 CFR 1.51; they have failed to address the written notice of appearance to the proper body (See 47 CFR 1.291(a)(5) and 47 CFR 1.209); and they have inappropriately coupled their notice of appearance with a request for reconsideration in violation of 47 CFR 1.44.

11. Substantively Keyboard's January 28, 1994 letter is defective. An appropriate written notice of appearance requires the party seeking the hearing to do two things. First they must agree to appear at the hearing, and secondly they must agree to present evidence on the matters specified in the

Order. Keyboard has agreed to attend the March 29, 1994 prehearing conference and the ~~Feb 27, 1994~~ hearing. But they have not agreed to present evidence on the matters specified in the Show Cause Order. That is a fatal defect.

12. ~~DISCONTINUED BY~~ In addition, and from an operational standpoint, WCSA(AM) is a basket case. For over the past decade this low-power daytime only AM station in an economically disadvantaged area has been off the air more than it has been on the air. Financially, it has been an eleven-year bust. Isn't it time the Commission brought an end to the charade?

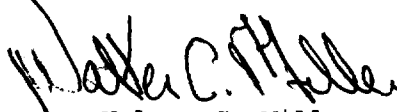
13. In its written notice of appearance Keyboard admits that the land on which WCSA(AM)'s transmitter is located has been sold out from under it and no alternative site has been secured. They admit that since April 1992 when its existing tower was struck by lightning they have been able to transmit a signal. They admit that the broadcast equipment that is available is defective and lacks replacement parts. Moreover, the new owner of the transmitter site land, one Sherman Smith, refuses to lease the transmitter site land to Keyboard, and has asserted a lien against the broadcast equipment that is stored on his land.

14. In brief, and based on its own admissions, Keyboard cannot expeditiously resume broadcast operations consistent with the Commission's rules. It is incapable of doing so. See DA 93-1523, released December 29, 1993, Issue (a). So no useful purpose would be served by going through an administrative hearing on the issues specified in DA 93-1523.

15. Since Keyboard has failed to comply with 47 CFR 1.91(c) and 47 CFR 1.92(a)(1), their right to a hearing is waived. So it's appropriate to terminate this hearing and certify this case to the Commission in the regular course of business.

So this hearing proceeding (MM Docket No. 93-317) IS TERMINATED; and MM Docket No. 93-317 IS CERTIFIED to the Commission in the regular course of business.

FEDERAL COMMUNICATIONS COMMISSION



Walter C. Miller
Administrative Law Judge